

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY  
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 19 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0179-PR
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
TIMOTHY FARRELL,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-48245 and CR-49585

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Timothy Farrell

Douglas  
In Propria Persona

\_\_\_\_\_  
V Á S Q U E Z, Judge.

¶1 In the latest of many post-conviction filings, petitioner Timothy Farrell ostensibly challenges the trial court's denial of a "motion to expunge" he filed below on May 1, 2009, in Pima County cause numbers CR-48245 and CR-49585. The trial court ruled

on the motion in a minute entry order of May 11, 2009, which states in its entirety: “The court has reviewed the motion to expunge and finds that good cause has not been shown to grant it. The motion is therefore denied.” Farrell has subsequently filed not one but two petitions for review under the present cause number, No. 2 CA-CR 2009-0179-PR.

¶2 By way of review, Farrell was convicted in cause number CR-48245 of one count of arson of an occupied structure. His presumptive, 10.5-year prison sentence for that conviction has since expired. The proceedings he has filed in this court related to that cause number include his appeal and four previous petitions for review. *State v. Farrell*, No. 2 CA-CR 2008-0183-PR (order of dismissal filed June 27, 2008); *State v. Farrell*, No. 2 CA-CR 2006-0228-PR (memorandum decision filed Jan. 25, 2007); *State v. Farrell*, No. 2 CA-CR 2004-0082-PR (decision order filed Feb. 17, 2005); *State v. Farrell*, No. 2 CA-CR 97-0304-PR (memorandum decision filed June 23, 1998); *State v. Farrell*, No. 2 CA-CR 95-0364 (memorandum decision filed Jan. 23, 1996).

¶3 In cause number CR-49585, Farrell was convicted of four counts of arson of an occupied structure, one count of unlawfully depositing an explosive, and one count of manufacturing, possessing, or transporting a prohibited weapon. The trial court imposed concurrent, aggravated prison terms, the longest for twenty-one years, to be served consecutively to Farrell’s sentence in CR-48245. This court has entertained an appeal and four previous petitions for review related to cause number CR-49585. *State v. Farrell*, No. 2 CA-CR 2008-0183-PR (order of dismissal filed June 27, 2008); *State v. Farrell*, No. 2 CA-

CR 2005-0381-PR (memorandum decision filed June 6, 2006); *State v. Farrell*, No. 2 CA-CR 01-0159-PR (memorandum decision filed Oct. 18, 2001); *State v. Farrell*, Nos. 2 CA-CR 95-0711, 2 CA-CR 99-0192-PR (consolidated) (memorandum decision filed Apr. 11, 2000).

¶4 In the motion he filed under both trial court cause numbers in May 2009, Farrell asked the court “to expunge from state and federal records, portions of his criminal history . . . show[ing] charges [that] . . . were either dismissed, or their dispositions were never recorded due to misidentification, acquittal, illegal search and seizure, etc.” He asserted summarily that his sentences had been enhanced improperly and aggravated on the basis of those charges.

¶5 To the extent Farrell’s “motion to expunge” was, in substance, a challenge to his sentences that might have been cognizable under either Rule 32.1(a) or (c), Ariz. R. Crim. P., such a claim has long been precluded by his failure to raise it in a timely fashion. *See* Ariz. R. Crim. P. 32.2(a). Alternatively, to the extent the request for expungement was presented to the trial court pursuant to Rule 32, Farrell has failed to demonstrate the court abused its discretion by denying the motion. *See generally State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990) (“We will not reverse the trial court’s decision unless an abuse of discretion affirmatively appears.”).

¶6 In the first of the two petitions for review now before us, filed on June 9, 2009, Farrell reiterates his assertion that he did not have a historical prior felony conviction when he was sentenced in these cases in 1995 and contends the trial court should have held an

evidentiary hearing before denying his motion to expunge. He did not demonstrate, however, that his claim was meritorious or even colorable in a petition for post-conviction relief;<sup>1</sup> that, even if his contention did have merit, it was not precluded, *see* Ariz. R. Crim. P. 32.2(a); or that the trial court abused its discretion in denying the motion.

¶7 In his subsequent, additional petition for review, which was filed in July 2009 and accompanied by a lengthy appendix, Farrell lists six “issues presented.” The first merely restates the contention in his June 9 petition that the trial court should have held an evidentiary hearing before ruling on his motion to expunge. The other five issues, although not presented to or ruled on by the trial court in conjunction with the motion to expunge, *see* Ariz. R. Crim. P. 32.9(c), are plainly precluded in any event.<sup>2</sup>

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<sup>1</sup>According to the sentencing transcript in cause number CR-49585, the trial court found Farrell’s arson conviction in cause number CR-48245 to be a prior conviction for a dangerous-nature felony. Farrell was sentenced in cause number CR-48245 in June 1995, approximately six months before he was sentenced in cause number CR-49585 in December 1995.

<sup>2</sup>Those issues are: (1) “Did trial counsel aid prosecutor by intentionally failing to object when the judge considered improper factors as aggravating circumstances at petitioner’s sentencing hearing?”; (2) “Did Judge Nichols abuse his discretion by not letting petitioner challenge these errors contained in both presentence reports[,] especially where petitioner objected before second presentence report was even written?”; (3) “Did trial counsel aid prosecutor by intentionally failing to argue that CR-48245 could not be a historical prior felony conviction, especially where he ‘defended’ both cause numbers, but merely stated, both cases were, first felonies?”; (4) “Did trial counsel (both causes), appellate counsel (both causes), and Rule 32 counsel (CR-49585) intentionally commit misconduct by refusing to leave second cause alone after petitioner told them numerous times they were fired before trial and appeal and even filed state bar complaints against them?”; and (5) “Did counsel[’]s conflict of interest in representing state witnesses, contribute to petitioner’s sentence in CR-49585 being aggravated, enhanced, and ran [sic] as consecutive when it should have been concurrent with CR-48245[’]s presumptive 10.5 year term?”.

¶8 In short, Farrell has not shown an abuse of the trial court's discretion in denying his motion, and we therefore will not disturb its ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Although we grant the petitions for review, we deny relief.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge